IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

RCRev..No. 271 of 2007

RCA.125/2006 of DIST & SESSIONS COURT,KOZHIKODE
RCP.133/2004 of PRL.MUNSIFF COURT, KOZHIKODE-I
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APPELLANTS/RESPONDENTS:
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1. MANZOOR, 30 YEARS, S/O.LATE ABOOBACKER, SIDIQUE, 13/873 B JASMA COOL & HOT, BIG BAZAR, KOZHIKODE.

2. E.P.IMBICHAMINABI, AGED 55 YEARS, W/O.LATE ABOOBACKER, SIDIQUE, M.K.VILLA HOUSE NO. 8/124, MEEN POYIL NILAM, RAHMAN BAZAR, P.O.KOLATHARA, KOZHIKODE 673 655, CHERUVANNUR AMSOM DESOM OF KOZHIKODE TALUK.

3. JASNA M.K., AGED 28 YEARS, W/O.ABDU, (D/O.M.K.ABOOBACKER SIDDIQUE), ELLABAM POYIL PARAMBA, P.O.VENGERI, KUNNADIAKKAL, KOZHIKODE.

BY ADV. SRI.NIRMAL. S

RESPONDENTS: RESPONDENTS/PETITIONER:
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1. BATTOLI SALMABY, AGED 47 YEARS, D/O.USMAN KOYA, VALIYAPADANNAPARAMBIL, KASABA AMSOM AND DESOM, KOZHIKODE.

2. M.K.ABDUL KHADER, AGED 38 YEARS, S/O.ABOOBACKER SIDDIQUE, FLAT NO.21, POST BOX NUMBER 20244, SHARJA, UAE.

BY

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. BALAKRISHNAN NAIR & HARUN-UL-RASHID, JJ.

R.C.Rev.No.271 of 2007

Dated, this the 14th day of August, 2007

ORDER

Balakrishnan Nair, J.

The revision petitioners are the tenants. The 1st respondent is the landlady.

2. The Rent Control Petition was filed by the 1st respondent herein alleging that the shop room occupied by the tenants is required for the bona fide use of her son Mr.N.V.Noufal under sec.11(3) of the Kerala Buildings (Lease and Rent Control) Act (for short, the Act). Her son is educated, but is remaining unemployed without any source of income. So she wanted to accommodate him in the petition schedule building so that he can start a stationery business there. Neither the landlady nor her husband is having any other room in their possession. She demanded vacant possession of the premises by issuing a notice on 12.8.2004. The respondents in the Rent Control Petition, who are the petitioners herein, contended that while the room was taken on rent, a security deposit of Rs.50,000/- was paid to the 1st respondent on 5.2.1994. The landlady's son is working in a Glass Emporium at Valiyangadi. The landlady and her husband are very affluent and they own several shop rooms. She wanted enhancement of rent to Rs.4500/-. The said demand was declined. Therefore the Revision Petition was filed under sec.11(3) of the Act, it is submitted. The appellants also claimed protection under the second

proviso to sec.11(3) of the Act.

3. From the side of the landlady, her son was examined as PW.1 and Ext.A1 was marked. From the side of the petitioners herein RW.1 was examined and Exts.B1 to B4 were marked. The Rent Control Court allowed the application under sec.11(3). In the tenants' appeal the Appellate Authority upheld the decision. The tenants have come up in revision challenging that the decision of the Appellate Authority as illegal, improper and irregular.

4. We heard the learned counsel for the revision petitioners. He contended that the landlady made a false claim that she is a purdah-nashin lady and kept herself away from the witness box. The evidence of PW.1 lacks credence as he does not know anything about the matter directly. The best evidence would be that of his mother, the 1st petitioner before the Rent Control Court. The learned counsel also pointed out that the 1st respondent herein owes an amount of Rs.50,000/- which was paid by way of security deposit while taking the room on rent. If that amount is repaid, the tenants can find out an alternate accommodation and shift from the premises.

5. The Appellate Authority elaborately considered whether the claim of the landlady is bona fide. The need put forward is for starting a stationery business in the petition schedule room for her son. The Appellate Authority noticed that there was no evidence to show that the 1st

respondent or her husband is in possession of any room. The Appellate Court also noticed that a room belonging to her which was adjacent to the petition schedule room was sold about 6-7 years back, owing to financial difficulties. The Appellate Authority observed that even assuming that enhancement of rent is claimed, still that will not disprove the claim of the landlady to the building for the occupation of her son under sec.11(3).

The materials on record were elaborately analysed by the Appellate Court and found that the petitioner's son is unemployed and is in need of the room to start his own business. The said finding cannot in any way be said to be perverse. The Appellate Authority also considered the claim of the tenants under the second proviso to sec.11. RW.1, the 1st petitioner herein, admitted that there are no documents to prove the income from the business in the petition schedule room. So, the Appellate Court took the view that mere assertion of the 1st appellant that it is the main source of income for the sustenance of the tenants cannot be accepted. Further, the Appellate Court also noticed the admission of RW.1 that there are several vacant rooms in the locality. But he would assert that they are not available. But the non-availability is not established by any credible evidence. The Appellate Authority took the view that the non-availability of rooms is to be proved by the tenant and except his assertion while in the witness box, no other evidence was tendered on this point. In the above circumstances, the Appellate Authority held that the tenants are not

entitled to the protection of the second proviso to sec.11(3). We feel that the same is also a plausible view on the evidence on record, taken by the Appellate Authority with which we cannot interfere under sec.20 of the Act. The point taken by the learned counsel for the petitioners that the landlady did not enter the witness box is of no consequence. The evidence on the side of the landlady was tendered by her son as P.W.1. In view of the above the Rent Control Petition fails and it is dismissed.

The learned counsel for the revision petitioners prayed for some time to vacate the premises. Six months' time is granted provided the revision petitioners file an affidavit within three weeks from today before the Rent Controller undertaking to vacate the premises within six months. They shall also pay the rent due from time to time till the tenanted room is vacated.

K. BALAKRISHNAN NAIR
JUDGE

HARUN-UL-RASHID,
JUDGE.

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